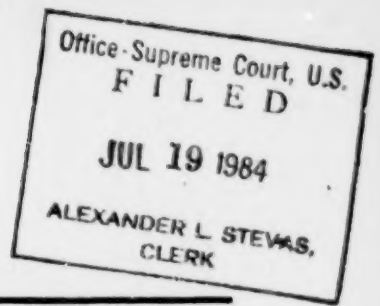


83-1920



No.

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1983

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RICHARD L. WINDSOR,  
*Petitioner,*

VS.

THE TENNESSEAN, *et al.*,  
*Respondents.*

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**REPLY TO PETITION  
FOR A WRIT OF CERTIORARI**

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*Attorney for Respondents*

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**STATEMENT OF THE CASE**

The petition in this case is verbose and contains many unreferenced statements of fact that do not appear to be part of the record. These statements are difficult to interpret, and, for the most part, they seem to have no direct relationship to the Petitioner's legal contention. The facts relevant to that contention are clear and uncomplicated, and are as follows:

1. In 1980, the Petitioner, Richard Windsor, filed a complaint against the Respondents alleging several State causes of action and a violation of 42 U.S.C. §1985 (1). The factual basis for all of the claims against the present Respondents (the "Tennessean" defendants) was that they had published false and defamatory newspaper articles about the Petitioner which had led to his firing as an Assistant United States Attorney for the Middle District of Tennessee.

2. The District Court dismissed the federal claims and remanded the State claims to the Circuit Court for Coffee County, Tennessee. The State libel claims were thereafter dismissed on interlocutory appeal to the Tennessee Court of Appeals. The Court held that the articles were substantially true, non-defamatory, and were in any case, Constitutionally protected by the doctrine of *New York Times v. Sullivan*. Windsor applied to the United States Supreme Court for a Writ of Certiorari to review this decision, which was denied.

3. Meanwhile, the dismissal of the Federal cause of action (the subject of the present Petition) was appealed to the Sixth Circuit Court of Appeals. The Court of Appeals affirmed the dismissal as to the Tennessean defendants, in part on grounds of collateral estoppel. Since the conduct complained of in the State case was the same conduct as that complained of in the Federal case, the Sixth Circuit held that the plaintiff was collaterally estopped in the Federal case by the ruling of the Tennessee Court of Appeals that the Tennessean defendants' conduct was non-tortious and Constitutionally protected.

### ARGUMENT

The Petitioner's point seems to be that the Tennessee Court of Appeals did not rule upon all of the statements alleged to have been libelous; and therefore the Sixth Circuit's application of collateral estoppel was overly broad. To the contrary, the holding of the Tennessee Court of Appeals was as follows: "In this case, the trial judge denied the motion for summary judgment, but upon review and after giving great deference to his ruling, we are unable to find any disputed issue of material fact *upon any of the plaintiff's claims* which would justify submitting this case to a jury or other trier of fact." Petitioner's Appendix, p. 32. (Emphasis added).

The Petitioner's argument appears to be based upon the Tennessee Court of Appeals' failure to specifically analyze every statement alleged to have been libelous. The Court of Appeals'

discussion was unusually detailed and specific. After discussing five of the allegedly libelous statements in detail, the Court made reference to “related” claims asserted by the plaintiff, and concluded generally that there was no material disputed fact to submit to a jury. (App. p. 33) The only undiscussed statement identified by the Petitioner was one to the effect that the United States Attorney had been “enraged” when he had learned of the Petitioner’s actions during the course of the Federal court hearing. The Petitioner contended that the U.S. Attorney had in fact *initially* been enraged, but had subsequently calmed down. The Respondents assume — and obviously the Sixth Circuit did as well — that this was one of the “related claims” which the Tennessee Court of Appeals found to be non-actionable.

The Respondents submit that the Petition in this case is absolutely devoid of merit, and should be denied.

Respectfully submitted,

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Attorneys for Respondents

#### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Reply to Petition for a Writ of Certiorari has been sent by U.S. Mail to Mr. Robert L. Huskey, Attorney for Petitioner, P.O. Box 439, Manchester, TN 37355 and to Mr. Joe B. Brown, United States Attorney, Middle District of Tennessee, Nashville, TN 37203 on this 18th day of July, 1984.

ALFRED H. KNIGHT